

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rita Bobe	Team: Team # 3	CCRB Case #: 200613255	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 09/29/2006 11:20 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 3/29/2008	EO SOL 3/29/2008	
Date/Time CV Reported Mon, 10/02/2006 11:48 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/05/2006 1:05 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alberto Puente	07747	939253	044 PCT
2. POM Freddy Chalen	16576	929870	044 PCT
3. An officer			
4. SGT Osvaldo Nunez	03579	918086	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Keri Thompson	02671	923250	044 PCT
2. POM Robert Navarro	07958	937169	044 PCT
3. POM Gregory Aspiazu	07066	933622	044 PCT
4. POM Victor Cardona	07045	934579	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Freddy Chalen	Force: PO Freddy Chalen used physical force against § 87(2)(b)	
B.POM Alberto Puente	Force: PO Alberto Puente used physical force against § 87(2)(b)	
C.POM Freddy Chalen	Force: PO Freddy Chalen used pepper spray against § 87(2)(b)	
D.SGT Osvaldo Nunez	Force: Sgt. Osvaldo Nunez used physical force against § 87(2)(b)	
E. An officer	Force: An officer used physical force against § 87(2)(b)	

## Synopsis

On September 29, 2006, § 87(2)(b) called IAB and filed a complaint on behalf of his uncle, § 87(2)(b) which was referred to the CCRB on October 5, 2006 under log #06-32530. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) had never met prior to this incident. On September 29, 2006, at approximately 11:20 PM, § 87(2)(b) double-parked his Jeep Cherokee in front of his restaurant, § 87(2)(b) located at § 87(2)(b) in the Bronx. An unidentified customer informed him that he was being issued a ticket by police officers. § 87(2)(b) exited the restaurant and approached the patrol car. § 87(2)(b) asked if he could move his car and did not wait for an answer. § 87(2)(b) attempted to enter his Jeep when PO1, identified by this investigation as PO Freddy Chalen, assigned to the 44<sup>th</sup> Precinct, grabbed him by the collar of his shirt. PO2, identified by this investigation as PO Alberto Puente, assigned to the 44<sup>th</sup> Precinct, grabbed § 87(2)(b) by the arms and handcuffed him. PO Puente and PO Chalen then allegedly pushed § 87(2)(b) to the ground and officers kicked him repeatedly in the head and on the right side of the face (Allegation A and B). § 87(2)(b) was then pepper sprayed and allegedly continued to be kicked by an officer (Allegation C). Officers then approached § 87(2)(b) and placed him down to the ground and handcuffed him. § 87(2)(b) alleged that officers punched him to the right side of his ribs and the right side of his jaw (Allegations D and E). § 87(2)(b) and § 87(2)(b) were then transported to the 44<sup>th</sup> Precinct Stationhouse. § 87(2)(b) and § 87(2)(b) both alleged that when their property vouchers were given to them, it did not correctly reflect all the money they had on their persons prior to their arrests. This was referred to IAB, log #06-32530.

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) made the following statements to medical personnel at § 87(2)(b) (encl. 3C-D):

*"I was kicked and maced. I was assaulted by police prior to arrival. Patient says he got in verbal dispute over parked vehicle and cops threw him to ground, stepped on neck, hit him in face and used pepper spray to eyes. Denies pain below neck."*

§ 87(2)(b) a § 87(2)(b)-old, 5'6", 205lbs, black male with black hair and brown eyes was interviewed at the CCRB on October 17, 2006 (encl. 3 G-Q). § 87(2)(b)

On September 29, 2006, at approximately 11:20 PM, § 87(2)(b) double-parked his Gray 2000 Jeep Cherokee (plate number § 87(2)(b) in front of § 87(2)(b) restaurant located at § 87(2)(b) in the Bronx, which he co-owns with his wife, § 87(2)(b). § 87(2)(b) entered the restaurant and was there for five minutes when an unknown male customer informed him that officers were issuing him a ticket. § 87(2)(b) exited the restaurant and observed a patrol car parked behind his Jeep. § 87(2)(b) approached the driver side of the patrol car whose window was rolled down and asked PO1, who he described as a Hispanic male, in uniform, average build, with brown hair and in his late 20s if he could move his car. PO1 was identified via investigation as PO Freddy Chalen of the 44<sup>th</sup> Precinct. § 87(2)(b) described PO2, who sat in the passenger seat as a Hispanic male, average build, 5'6, and in uniform. PO2 was identified via investigation at PO Alberto Puente of the 44<sup>th</sup> Precinct. § 87(2)(b) did not wait for PO Chalen to reply and walked towards his Jeep. As § 87(2)(b) went to open the door of his jeep, PO Chalen grabbed § 87(2)(b) from the collar of his shirt and PO Puente grabbed his arms and placed them behind his back. The officers'

only statement to § 87(2)(b) was that he could not move his car. PO2 handcuffed § 87(2)(b) who did not resist the officers. PO Chalen and PO Puente then pushed § 87(2)(b) to the ground next to his drivers' side door. § 87(2)(b) faced the ground and officers kicked him repeatedly in the head and on the right side of his face. Although § 87(2)(b) stated that both officers partook in kicking him, § 87(2)(b) did not see the officers since he was facing the ground. § 87(2)(b) then heard one of the officers request backup. § 87(2)(b) recalled hearing his wife screaming and crying. § 87(2)(b) acknowledged that a crowd formed as a result of the incident. § 87(2)(b) approximated that 10-15 uniformed officers responded to the scene. Prior to their arrival however, he was pepper sprayed by either PO Chalen or PO Puente and they both continued to kick him.

§ 87(2)(b) was transported to the 44<sup>th</sup> Precinct and requested medical attention. EMS washed out § 87(2)(b)'s eyes at the stationhouse. § 87(2)(b) was then transported to § 87(2)(b) since his eyes continued to burn. § 87(2)(b) informed medical personnel that his head was hurting but they did not treat him for that specifically. § 87(2)(b) noted that he had only sustained swelling to his face but that he was not bleeding at any time. § 87(2)(b) was then returned to the precinct. He was then transported to Central Booking. § 87(2)(b) noted that he had taken out around \$2800 to prepare for a family celebration on the day of the incident. Officers did not count § 87(2)(b)'s money in front of him and when he received his property voucher, only \$2286 had been vouchered, which was referred to IAB, log # 06-32530.

§ 87(2)(b) sought medical treatment from a private doctor a couple days after the incident and had a CAT scan for his head. § 87(2)(b) explained that § 87(2)(b) was also arrested as a result of the incident. § 87(2)(b) did not observe § 87(2)(b)'s interaction with the officers. During the initial complaint made to IAB, § 87(2)(b)'s nephew, § 87(2)(b) alleged that officers struck § 87(2)(b) with a nightstick. § 87(2)(b) denied this allegation. Upon his release, § 87(2)(b) informed § 87(2)(b) that she was issued four summonses with regards to violations in relation to the restaurant (encl. 3K-M). At the end of the interview, § 87(2)(b) provided a telephone number for a witness, § 87(2)(b) who is § 87(2)(b)'s customer. § 87(2)(b) had provided his telephone number to § 87(2)(b) during the incident.

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b)-old, 5'10", 195lbs, black male, with brown hair and brown eyes was interviewed at the CCRB on October 17, 2006 (encl. 3 R-V). § 87(2)(b)

On September 29, 2006, at approximately 11:00 PM, § 87(2)(b) was walking with his cousin, § 87(2)(b) and his girlfriend (name unknown) to buy some food from § 87(2)(b) Restaurant located at § 87(2)(b) in the Bronx. When they arrived to the restaurant, § 87(2)(b) observed a crowd of officers beating a man. § 87(2)(b) approached and saw officers on top of § 87(2)(b). § 87(2)(b) had never met § 87(2)(b) prior to this incident but subsequently learned that he is the co-owner of § 87(2)(b) restaurant. § 87(2)(b) approximated that he stood 10 feet away. An officer appeared to have pepper spray in his hand. § 87(2)(b) heard § 87(2)(b) who was lying on the ground stating, "What have I done wrong? Please let me go." Approximately 10-12 officers were on top of § 87(2)(b) kicking him around his body. § 87(2)(b) could not provide a description of the officers.

§ 87(2)(b) grabbed his cell phone and took approximately six pictures of the incident. PO Puente, who he described as a Hispanic male, 5'11, average build, black hair and uniform and PO2, who he described as a Hispanic male, 5'4, slim, black hair and in uniform approached § 87(2)(b) from behind. § 87(2)(b) heard § 87(2)(b) yell to him to run because the officers were going to get him. § 87(2)(b) did not have an opportunity to run. PO Puente and PO2 grabbed § 87(2)(b) from the back of his belt and placed him face down to the ground. § 87(2)(b) was handcuffed and then punched by an officer to the right side of his ribs and the right side of his jaw. § 87(2)(b) incurred no injuries or bruises as a result. Although § 87(2)(b) could not see which officer punched him in the face, he claimed that it had to be PO Puente. Two other uniformed officers arrived as § 87(2)(b) was turned around on the ground. As PO Puente stood him up, § 87(2)(b) observed § 87(2)(b) on the ground handcuffed, with no officers on top of him. § 87(2)(b) was then transported to the 44<sup>th</sup> Precinct stationhouse. § 87(2)(b) asked PO Puente why he had been arrested and he informed him that he should not have taken photos. § 87(2)(b) received medical

treatment for asthma when he arrived to Central Booking. However, this was of a pre-existing condition he suffers from not related to the incident. § 87(2)(b) did not request medical attention given that he had not sustained any injuries.

§ 87(2)(b) noted that he had \$375.00 on his person and that he was returned \$303.00 upon his release, which was referred to IAB, log # 06-32530. § 87(2)(b)'s cell phone was returned to him but he alleged that everything on it including phone numbers had been deleted as well as the photos he took of the incident.

## **Results of Investigation**

### **Attempt to contact witnesses**

Five calls and two letters were sent to § 87(2)(b) who filed the complaint. He did not cooperate with the investigation. § 87(2)(b) failed to appear to an interview scheduled for December 5, 2006. Two letters were sent to her residence. § 87(2)(b) refused to provide a phone number for his wife. Although messages were left with § 87(2)(b) to pass on to his wife, it was not possible to contact her directly. The investigator also scheduled an interview for December 5, 2006 with § 87(2)(b) who witnessed the incident. He failed to appear. Two please call letters were sent to § 87(2)(b)'s residence and his phone number has been disconnected. § 87(2)(b) provided a brief telephone statement, provide below, with regards to the incident.

§ 87(2)(b)

§ 87(2)(b) provided the following brief statement over the phone on November 29, 2006 (encl. 9A). § 87(2)(b) was double-parked in front of the restaurant. The police were about to issue him a ticket. § 87(2)(b) exited the restaurant and the officers rushed into him. The officers' pepper sprayed § 87(2)(b) and then took him down to the ground. § 87(2)(b) resisted being handcuffed. An officer took out a nightstick and struck § 87(2)(b) on his hands and legs. § 87(2)(b) could only describe the officers as white males. During this incident § 87(2)(b) was standing in front of the restaurant observing the incident. Other patrol cars arrived, with approximately 20 officers on the scene.

§ 87(2)(b) observed another male taping the incident. Officers ordered him to move back and he told them it was a public street. Officers took him down to the ground (method unknown) and kicked him. This man was also handcuffed. § 87(2)(b) and the other male were transported to the stationhouse. § 87(2)(b)'s wife was crying in the restaurant. § 87(2)(b) tried to console her and observed officers looking at the licenses on the wall. They issued her tickets for them. § 87(2)(b) did not observe any injuries on § 87(2)(b) or § 87(2)(b) once they were handcuffed and placed into the patrol car.

### **Officer Identification**

The SPRINT (encl. 7A) lists sectors 44D, 44I and sector 44ST2 as responding to the scene. The roll call lists (encl. 7C-E) PO Puente and PO Chalen as assigned to sector 44D, PO Aspiazu and PO Navarro assigned to sector 44I and Sgt. Nunez and PO Cardona assigned to sector 44ST2. During their CCRB interviews, they confirmed being present at the scene.

### **Officer Statements**

#### **PO Freddy Chalen**

PO Freddy Chalen, a § 87(2)(b)-old, 5'4", 135lbs, Hispanic male with black hair was interviewed at the CCRB on April 9, 2007 (encl. 4A-E). On September 29, 2006, PO Chalen worked from 3:00 PM to 11:35 PM. PO Puente was his partner and they were assigned to Sector DEF. Both officers were in uniform and PO Chalen was the operator. PO Chalen had entries in his memobook with regards to the incident (encl. 4A-C).

On September 29, 2006, at approximately 11:20 PM, PO Chalen and PO Puente observed a double-parked vehicle in front of § 87(2)(b) in the Bronx. They stopped behind the vehicle, approximately five feet away and began completing a summons. The motorist, who was identified from his Mugshot pedigree, as § 87(2)(b) exited a restaurant and approached the officers who were seated in the patrol car to find out what was happening. PO Chalen informed § 87(2)(b) that he was being issued a summons for double parking his vehicle. PO Chalen noted that he briefly smelled alcohol on § 87(2)(b)'s breath. PO Chalen exited the patrol car and walked towards § 87(2)(b)'s car to read information for PO Puente. PO Chalen observed that § 87(2)(b)'s speech was slurred, his eyes were red and he was unable to walk straight. § 87(2)(b) made statements to PO Chalen such as, "Fuck you. Fuck you. Who do you think you are? I own this restaurant and I can double park here." A black female, whom PO Chalen believed to be § 87(2)(b)'s wife, stated to PO Chalen not to listen to her husband because he was drunk. § 87(2)(b) opened the car door and put one foot in and PO Chalen instructed § 87(2)(b) two to three times to stop, because he was being issued a summons and needed to get past him to obtain his information. § 87(2)(b) then forcibly shoved PO Chalen's right shoulder. PO Puente then exited the patrol car and both officers instructed § 87(2)(b) to turn around so that he could be arrested for § 87(2)(b). § 87(2)(b)'s wife begged the officers not to arrest him.

§ 87(2)(b) then threw himself to the ground, landing on his side, between his car and the car next to it. § 87(2)(b) then turned and was on his back facing the officers. § 87(2)(b) kicked and flailed his arms so that he could not be handcuffed. PO Chalen approximated that there was only three feet of space between the cars. PO Chalen stood at § 87(2)(b)'s legs and PO Puente was near his head in the narrow space. PO Chalen repeatedly instructed § 87(2)(b) to turn around and put his hands behind his back. § 87(2)(b) failed to do this. PO Chalen heard a crowd of people and stated to § 87(2)(b) that he needed to do as instructed or else he would use pepper spray against him. § 87(2)(b) did not comply and PO Chalen used pepper spray against him. When PO Chalen looked up, he observed that over 20 people were standing in a crowd and decided to call for additional units to the scene. Within 30 seconds, additional units responded to the scene. Officers took § 87(2)(b) out of the space and handcuffed him. PO Chalen did not partake in this. During that time, PO Chalen conducted crowd control. After approximately 30 seconds of doing this, PO Chalen, who was 20 feet away, looked over to his right, and observed PO Puente handcuffing § 87(2)(b). PO Chalen did not know why he was being arrested and did not recall if any other officer was helping him. PO Chalen then got into his patrol car. Officers had already placed § 87(2)(b) in the vehicle. PO Chalen did not recall if he had sustained any injuries as result of the incident. PO Chalen never interacted with § 87(2)(b) and did not recognize his arrest photo. PO Chalen and PO Puente transported § 87(2)(b) to the 44<sup>th</sup> Precinct Stationhouse.

With the exception of attempting to shift § 87(2)(b) so that they could handcuff him and the use of pepper spray, PO Chalen denied the allegations that § 87(2)(b) was kicked and punched and that § 87(2)(b) was punched.

#### **PO Alberto Puente**

PO Puente completed the arrest reports and complaint report for § 87(2)(b) and § 87(2)(b) (encl. 4F-M). PO Puente's narrative for § 87(2)(b) is more detailed in his memobook, as found below. PO Puente noted the following in § 87(2)(b)'s arrest narrative (encl. 4F-G):

*"At time and place of occurrence, perpetrator was observed by the undersigned to engage in tumultuous and violent conduct and thereby recklessly creating a grave risk of public alarm."*

PO Puente, a § 87(2)(b)-old, 6'0", 190lbs, Hispanic male with black hair, was interviewed at the CCRB on April 6, 2007. On September 29, 2006, PO Puente worked from 3:00 PM to 7:00 AM (extended tour). PO Chalen was his partner and they were assigned to Sector DEF. They were both in uniform and PO Puente was the recorder. PO Puente had the following entries in his memobook with regards to this incident (encl. 4N-Q):

2324- 2 under in regards to parking summons § 87(2)(b). At time, and place of occurrence, defendant was in § 87(2)(b) while his 2000 Gray Jeep was double-parked at the corner of § 87(2)(b)

§ 87(2)(b). When defendant § 87(2)(b) came out of the restaurant on the corner of § 87(2)(b), defendant walked to the patrol car while summons was being issued to a gray Jeep with plate #§ 87(2)(b) New York plates. § 87(2)(b) shouted, "I'm the owner of this restaurant, I always double park my car here and never get summonses. Fuck you guys. I'm gonna move my car." § 87(2)(b)'s demeanor was very aggressive towards the police officers. When defendant approached the driver side window, we could smell alcohol odor coming from his breath. § 87(2)(b) proceeded to turn on his car in order to drive away and avoid the above car from being summonsed. At this point, PO Chalen and I get off the car to finish information required on the summons that was being written. PO Chalen approached car on the driver side and is informing § 87(2)(b) he cannot turn his car ignition because we were not finished writing the summons. As PO Chalen is telling defendant not to turn on car ignition, § 87(2)(b) pushes PO Chalen with his right arm on PO Chalen's right shoulder to prevent him from obtaining his car information on the dashboard, where registration and inspection information is posted. At this point, § 87(2)(b) was under arrest for § 87(2)(b). § 87(2)(b) did resist arrest.

PO Puente corroborated PO Chalen's statement up to the point that additional units arrived to the scene. PO Puente continued to try to get § 87(2)(b)'s arms. Officers arrived and aided PO Puente in handcuffing § 87(2)(b). They grabbed him off the ground, put him on his feet. § 87(2)(b) was partially carried because he did not want to move his legs. § 87(2)(b) was placed in PO Puente's patrol car. At some point during the incident, PO Puente heard § 87(2)(b) asking the crowd to gather and that their number outweighed the officers so they could stop them. Once PO Puente handcuffed § 87(2)(b) he then approached § 87(2)(b) with PO Chalen. PO Puente stated to § 87(2)(b) that he was going to place him under arrest for § 87(2)(b). § 87(2)(b) stated to PO Puente, "Fuck you guys. I don't want to spend a night in jail." PO Puente turned § 87(2)(b) around, who resisted a little bit by flailing his arms and handcuffed him. PO Chalen did not aid PO Puente in effecting § 87(2)(b)'s arrest. § 87(2)(b) was placed in another patrol car. PO Puente processed the arrests at the stationhouse. He noted that he believes he observed a laceration on § 87(2)(b)'s head but did not know if he had this prior to their interaction. PO Puente noted that he could have obtained this laceration when he threw himself to the ground and continued to resist the officers.

PO Puente denied § 87(2)(b)'s allegation of force with the exception of the use of pepper spray by PO Chalen. PO Puente identified both § 87(2)(b) and § 87(2)(b) from their arrest photos. PO Puente noted that he forgot to note that pepper spray was used in the arrest report. PO Puente did not recall if § 87(2)(b) had a phone camera when he approached him.

#### **Sgt. Osvaldo Nunez**

Sgt. Nunez, a § 87(2)(b)-old, 6'1", 238lbs, Hispanic male with brown hair, was interviewed at the CCRB on April 19, 2007 (encl. 4T-X). On September 29, 2006, Sgt. Nunez worked from 5:15 PM to 2:12 AM. He was the Impact Sergeant and PO Cardona was his partner. Both officers were in uniform. Sgt. Nunez had entries in his memobook with regards to the arrests that were effected (encl. 4T-V).

On September 29, 2006, at approximately 11:20 PM, Sgt. Nunez responded to a request for additional units at § 87(2)(b) in the Bronx. Sgt. Nunez arrived with another patrol car simultaneously but did not know the identity of these officers. Sgt. Nunez observed PO Puente between a double-parked car, and a parked car in a confined space, attempting to arrest § 87(2)(b) who was on the ground. § 87(2)(b) was kicking and wiggling around while PO Puente tried to get him under control. § 87(2)(b) was swinging his elbows back at PO Puente. § 87(2)(b) was laying on his front. PO Puente was straddling him and was near his mid-section. Sgt. Nunez thinks that PO Puente had one handcuff on § 87(2)(b). Sgt. Nunez could not tell if § 87(2)(b) was intoxicated. Sgt. Nunez did not recall where PO Chalen was. Sgt. Nunez noted that the space was so tight that he could not fit into it. Sgt. Nunez grabbed § 87(2)(b) by the jacket at the shoulders and pulled him out towards him, away from the cars so that he could assist PO Puente. Other officers arrived and aided Sgt. Nunez by cuffing § 87(2)(b). Sgt. Nunez turned his attention to the crowd of approximately 50-75 people and started dispersing people. Sgt. Nunez described many in the crowd as having alcohol and there were broken beer bottles in front of the restaurant. The crowd was yelling, and asking why the arrests were being made. A second male, who Sgt. Nunez instructed to leave the scene two to three times, refused to do so. Given that only two arrests were effected at the scene, the investigation

identified this individual as § 87(2)(b). Sgt. Nunez was presented with his Mugshot pedigree but did not recognize him. § 87(2)(b) stated to Sgt. Nunez that § 87(2)(b) had not done anything. § 87(2)(b) then stated to Sgt. Nunez, "Fuck you, I'm not going." Sgt. Nunez grabbed him by the wrist to handcuff him. He got one cuff on when § 87(2)(b) swung his elbow at Sgt. Nunez. Additional officers aided Sgt. Nunez by pulling § 87(2)(b) down to the ground. Sgt. Nunez did not recall what officers aided him. § 87(2)(b) was kicking at the officers. § 87(2)(b) was transported to the stationhouse. Sgt. Nunez recalled PO Aspiazu and PO Navarro at the scene but did not know the role they played at the scene. Sgt. Nunez did not recall if pepper spray was used prior to his arrival.

Sgt. Nunez denied all the allegations with one exception. He noted there was no room for PO Chalen and PO Puente to kick § 87(2)(b). Sgt. Nunez gave § 87(2)(b) a knee 'stunt' and hit him on the side of the ribs so that he would stop resisting the officers as they attempted to arrest him. Sgt. Nunez was not informed about the summonses that were issued to the restaurant and had not been informed that § 87(2)(b) co-owned this restaurant. Sgt. Nunez never entered the restaurant. Sgt. Nunez did not recall seeing Sgt. Thompson at the scene.

### **PO Robert Navarro**

PO Navarro, a § 87(2)(b)-old, 5'4", 170lbs, Hispanic male with brown hair and brown eyes was interviewed at the CCRB on May 14, 2007 (encl. 4Y-Z). On September 29, 2006, PO Navarro worked from 3:00 PM to 11:35 PM. PO Aspiazu was his partner and they were both in uniform. PO Navarro did not have his memobook with him, but stated that he had no entries in his memobook with regards to this incident and he did not recall what sector they were assigned on this day.

On September 29, 2006, PO Navarro and PO Aspiazu responded to an additional units request at § 87(2)(b) in the Bronx. Upon their arrival, PO Navarro observed two males in custody, in handcuffs being placed in patrol cars. PO Chalen and PO Puente were there, as were additional patrol cars. Lt. Cortwright arrived after PO Navarro and PO Aspiazu. Civilians approached the officers and asked them what was going to happen to the two men who were placed in custody. They instructed everyone to get back to their establishments. PO Navarro entered the restaurant and then consulted Lt. Cortwright, informing him that it lacked licenses and certificates. PO Navarro then issued summonses for § 87(2)(b). PO Navarro has issued such summonses in the past during details. § 87(2)(b) provided her identification to him and appeared to be upset about the arrests. None of the civilians approached him about physical force being used against § 87(2)(b) and § 87(2)(b) and PO Navarro never observed any physical force being used against § 87(2)(b) and § 87(2)(b).

### **PO Gregory Aspiazu**

PO Aspiazu, a § 87(2)(b)-old, 6'0", 195lbs, white male with black hair and brown eyes was interviewed at the CCRB on May 11, 2007 (encl. 5A-E). On September 29, 2006, PO Aspiazu worked from 3:00 PM to 11:35 PM. PO Navarro was his partner and they were both in uniform. They were assigned to Sector HIJ. PO Aspiazu had no entries in his memobook with regards to this incident (encl. 5A-C).

PO Aspiazu did not recall much of the incident. PO Aspiazu recalled that they arrived after the incident was over. PO Aspiazu did not recall PO Navarro issuing summonses or entering the restaurant. PO Aspiazu recalled Sgt. Nunez being present. PO Aspiazu only recalled standing outside of his patrol car and that one person who had been arrested was sitting in a patrol car. PO Aspiazu was presented with § 87(2)(b) and § 87(2)(b)'s Mugshot pedigrees and he did not recognize them. PO Aspiazu denied the allegations.

### **Sgt. Keri Thompson**

Sgt. Thompson, a § 87(2)(b)-old, 5'5", 120lbs, white female with red hair and brown eyes was interviewed at the CCRB on May 16, 2007 (encl. 5F-G). On September 29, 2006, Sgt. Thompson worked from 2:50PM to 11:57 PM and was assigned as the patrol sergeant. Sgt. Thompson did not recall responding to this incident

and did not know who her partner was on the day. Sgt. Thompson did not have her memobook with her at the time of the interview.

### **Officers not interviewed**

§ 87(2)(g)

### **Medical Records**

§ 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) (encl. 6A-P). § 87(2)(b) complained of pain to the neck area and to the face. He was positive for tenderness and was noted to have been pepper sprayed. § 87(2)(b) also had swelling to the right side of his face under his eye (zygomatic bone). X-rays revealed no fractures. It was determined that § 87(2)(b) had suffered from a head injury and was prescribed ibuprofen for the pain. Central Booking's pre-arraignment screening sheet noted that § 87(2)(b) had a laceration to the right side of his face towards the right side of the head (encl. 6Q-R). § 87(2)(b) sought medical treatment from § 87(2)(b) on § 87(2)(b) (encl. 6S-W). He informed him that he had suffered from a head injury. It was noted that there was tenderness on the right side of § 87(2)(b)'s head. However, the doctor then noted "head injury?"

### **Police Documents**

**SPRINT #F14956:** The SPRINT (encl. 7A) lists sector 44D effecting an arrest and also requesting additional units to § 87(2)(b). Sectors 44ST2 responded to the scene and 2 arrests were effected.

**Command Log:** § 87(2)(b) and § 87(2)(b)'s arrests are listed in the 44<sup>th</sup> Precinct command log (encl. 7B) and PO Puente is listed as the arresting officer. Both § 87(2)(b) and § 87(2)(b) are listed as intoxicated.

**Roll Call:** The 44<sup>th</sup> Precinct command log lists Sgt. Nunez, PO Cardona, PO Chalen, PO Puente, PO Aspiazu, and PO Navarro as being assigned to work Tour 3 on September 29, 2006 (encl. 7C-E).

**Prisoner Holding Pen Roster:** The prisoner holding pen roster (encl. 7F) notes that § 87(2)(b) was at the 44<sup>th</sup> Precinct stationhouse approximately two hours before he was transported to § 87(2)(b). § 87(2)(b) was returned to the stationhouse at 6:40 AM. § 87(2)(b) was also noted as being held at the stationhouse from 12:20 AM until 6:05 AM when he was transported to Bronx Central Booking. § 87(2)(b) was transported separately to Bronx Central Booking at 7:55 AM.

**Mugshot Pedigrees:** § 87(2)(b) and § 87(2)(b)'s Mugshot pedigrees reveal no visible injuries (encl. 3W-X).

**Communications CD:** An officer contacts the dispatcher who attempts to identify their location. The same officer then can be heard making the following statement, *"If you don't get your act together, you're going to get someone hurt."* Background noise is loud and chaotic (encl. 9C).

### **Police Officer CCRB Substantiation History**

During their 1-year tenure and 4 year-tenure respectively with the NYPD, PO Puente (encl. 2A) and PO Chalen (encl. 2B) have no substantiated CCRB cases. During his 10-year tenure with the NYPD, Sgt. Nunez has two substantiated allegations with the CCRB in reference to case #200100569. Sgt. Nunez was substantiated for using a radio as a club and providing a false official statement. His DCT trial found him not guilty (encl. 2C-E).

### **Civilian CCRB History**

§ 87(2)(b) and § 87(2)(b) have no prior cases with the CCRB (encl. 2F, 2H). § 87(2)(b) has one prior case with the CCRB, § 87(2)(b)



## Record of Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## Conclusions and Recommendations

### Subject Officer Identification

§ 87(2)(b) described PO1 as a Hispanic male, in uniform, average build, with brown hair, the operator of the patrol car and in his late 20's. PO Chalen was the operator of the patrol car that night and is a § 87(2)(b) -ol, 5'4", 135lbs, Hispanic male. § 87(2)(b) described PO2 as a Hispanic male, average build, 5'6", and in uniform. PO Puente, the recorder, is a § 87(2)(b) -old, 6'0", 190lbs, Hispanic male. § 87(2)(b) alleged that when he attempted to get into his car as these officers issued him a summons, PO Chalen and PO Puente allegedly pushed him to the ground, and repeatedly kicked him in the head and to the right side of the face. Based on their own testimonies, PO Chalen and PO Puente were the only officers who were initially at the scene and attempted to issue § 87(2)(b) a summons for double-parking. § 87(2)(g)

§ 87(2)(b) alleged that PO Puente and an officer approached him and placed him on the ground. § 87(2)(b) alleged that an officer punched him to the ribs and an officer punched him to the jaw. § 87(2)(g)

### Undisputed Facts

On September 29, 2006, PO Chalen and PO Puente attempted to issue a double-parking summons to § 87(2)(b). § 87(2)(b) attempted to get into his car to move it. PO Chalen instructed § 87(2)(b) that he could not move his car. PO Chalen and PO Puente did attempt to handcuff § 87(2)(b). PO Chalen used pepper spray against § 87(2)(b). PO Chalen requested additional units to the scene. Sgt. Nunez and an officer placed § 87(2)(b) down on the ground. Sgt. Nunez used a knee stunt technique against § 87(2)(b)'s ribs. § 87(2)(b) was handcuffed.

### Disputed Facts

§ 87(2)(g)

### Credibility

§ 87(2)(g) According to his medical records, § 87(2)(b) told medical personnel at § 87(2)(b) that he was involved in a verbal dispute with the officers prior to his arrest. However,

during his CCRB statement, § 87(2)(b) stated that he approached the officers as they were completing a summons for his double-parked Jeep, told them that he was moving his car, and continued to walk towards his car without waiting for a response from the officers. At no point did § 87(2)(b) indicate that he was involved in a verbal dispute with the officers. § 87(2)(g)

§ 87(2)(g) He alleged that 10-12 officers were on top of § 87(2)(b) kicking him and that he was being pepper sprayed when he arrived to the scene. § 87(2)(b) himself noted that the only two officers that allegedly used force on him were PO Chalen and PO Puente. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Analysis

**Allegation A: PO Freddy Chalen used physical force against § 87(2)(b)**

**Allegation B: PO Alberto Puente used physical force against § 87(2)(b)**

§ 87(2)(g) § 87(2)(b) attempted to get to his car so that he could move it before a summons was issued to him even though the officers clearly stated to him that he could not do this. Both PO Chalen and PO Puente affirmed that when PO Chalen approached § 87(2)(b) § 87(2)(b) forcibly shoved PO Chalen's right shoulder. § 87(2)(g)

**Allegation C: PO Freddy Chalen used pepper spray against § 87(2)(b)**

According to Patrol Guide procedure 212-95 (encl. 1A), pepper-spray may be used when, "*a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force.*" § 87(2)(g)

**Allegation D: Sgt. Osvaldo Nunez used physical force against § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(g) Sgt. Nunez admitted that he took § 87(2)(b) down to the ground and used a knee stunt technique striking § 87(2)(b) once in the ribs to gain compliance. § 87(2)(g)

**Allegation E: An officer used physical force against § 87(2)(b)**

§ 87(2)(g) § 87(2)(b)'s Mugshot pedigree revealed no visible injury. § 87(2)(b) admitted that he did not sustain any injuries and therefore did not seek any medical treatment. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: